

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

DONALD SCOTT KEMP (4)

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Case No. 4:01cr17
(Judge Schell)

REPORT AND RECOMMENDATION **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on September 28, 2010, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Jay Combs.

On February 13, 2002, Defendant was sentenced by the Honorable Richard A. Schell to one hundred and twenty (120) months' custody followed by three (3) years of supervised release for the offense of Conspiracy to Possess Listed Chemical with Intent to Manufacture or Possess or Distribute Listed Chemical Knowing Listed Chemical will be used to Manufacture a Controlled Substance. On January 28, 2009, Defendant completed his period of imprisonment and began service of his supervised term.

On August 26, 2010, the U.S. Pretrial Services Officer executed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated several mandatory and standard conditions. Violation allegations one, two, and five were dismissed by the Government. The petition also alleged violation of the following additional mandatory condition: the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter,

as directed by the probation officer. The petition also alleged violation of the following additional standard condition: the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substances, except as prescribed by a physician.

The petition alleges that Defendant committed the following acts with regard to the remaining violations: defendant submitted urine specimens that tested positive for methamphetamine on May 5, 2009, March 5, 2010, July 16, 2010, July 20, 2010, August 25, 2010, and September 1, 2010.

Prior to the Government putting on its case, Defendant entered a plea of true to the remaining violations.

RECOMMENDATION

The Court recommends that the District Judge revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-one (21) months with no supervised release to follow. It is also recommended that Defendant be housed in the Bureau of Prisons, Texarkana Unit.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

SIGNED this 30th day of September, 2010.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE